

Order 96-11-24

Served: December 2, 1996

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**



Issued by the Department of Transportation
on the 7th day of November, 1996

AMERIJET INTERNATIONAL, INC.

**DHL AIRWAYS, INC.
FEDERAL EXPRESS CORPORATION
UNITED PARCEL SERVICE CO.**

for new, amendment, and/or renewal of certificates
of public convenience and necessity of property and
mail pursuant to 49 U.S.C. 41102 (U.S.-Mexico)

Dockets 45959

47801

OST-95-470 ¹

49525

OST-95-614 ²

49084

49517

49533

FEDERAL EXPRESS CORPORATION

for renewal of an exemption to provide scheduled
foreign air transportation of property and mail
pursuant to 49 U.S.C. 40109 (U.S.-Mexico)

Docket 47115

ORDER ISSUING CERTIFICATES AND DISMISSING PETITION

Summary

¹ Formerly Docket 47803.

² Formerly Docket 48641.

The captioned applicants seek grant, renewal and/or amendment of certificates of public convenience and necessity under section 41102 of Title 49 of the United States Code to provide scheduled foreign air transportation of property and mail in various U.S.-Mexico markets. The applications are fully described in the attachments to this order. Because the public convenience and necessity bases for granting these applications are clear, and the applications are not controversial, it is appropriate to use this simplified Subpart Q procedure to grant the requested authority.³

The applicants have filed and perfected each application as required by 14 CFR 201 and served it as required by 14 CFR 302.1705. Each application was summarized in the Federal Register, as cited in the relevant descriptive attachment, and was also summarized in the Department's published weekly list of applications filed. These notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Except as noted in the individual attachments, no answers to these applications were filed.

Public Convenience and Necessity

Except where noted in the appendices, we find that grant or amendment of these certificates is consistent with the public convenience and necessity. The services authorized are the subject of, and consistent with, the U.S.-Mexico Air Transport Agreement. The certificates, therefore, are consistent with the agreement and use rights for which the United States has exchanged valuable operating rights. All of the authority conferred here contributes to the variety of price and service options available to shippers.

As described in the attached appendices, we have decided to defer action on United Parcel Service's (UPS) request for new certificate authority to serve Guatemala City (Docket 49533). We have also decided to dismiss certain carrier requests for U.S.-Mexico certificate authority where a carrier has no firm plans to serve the market, or where the carrier's corresponding exemption authority has become dormant or has expired. In this regard, we will dismiss the following: Amerijet's request for Houston-Cancun/Merida and Dayton-Mexico City (via Saltillo) authority in Docket 45959; Amerijet's request for Miami-Chetumal/Veracruz/Puebla/ Tapachula and Dallas/Ft. Worth-Mexico City/Guadalajara/Monterrey authority in Docket 47801; and UPS' request for Houston-Guadalajara/Monterrey authority in Docket 49533. In addition, we will dismiss UPS's request for San Antonio-Guadalajara and Louisville-Mexico City authority in Docket 49533 because the requests are duplicative of those in Dockets 48641 and 49084, respectively. Finally, we will dismiss DHL's request that it be awarded permanent authority in various U.S.-Mexico markets.

Fitness/Citizenship

³ 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceeding under Subpart Q and proceed directly to a final decision.

Each applicant is a citizen of the United States as defined in 49 U.S.C. 40102(a)(15). Each is an operating certificated air carrier, for which the authority at issue here would not constitute a substantial change in operations which would require further review by the Department. No information has come to our attention which leads us to question the fitness of the applicants to conduct air transportation operations. Therefore, on the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we find each applicant is fit, willing, and able to provide the services authorized.

Terms, Conditions, and Limitations

Each certificate of public convenience and necessity is subject to the standard terms, conditions, and limitations we consistently impose in the public interest. All of the certificate actions taken by this order pertain to limited-entry routes. Therefore, consistent with our established policy in this regard, we have issued temporary, experimental certificates of five years' duration under section 49 U.S.C. 41102 (a)(2).⁴

Pendente Lite Exemptions

For those services operated under current exemptions, those exemptions will expire in accordance with their own terms 90 days after we submit this order for review under section 49 U.S.C. 41307. For those routes operated under expired exemptions and kept in force by 5 U.S.C. 558(c), the exemption renewal applications on file will be dismissed by separate order, upon the effectiveness of the corresponding certificates of public convenience and necessity. The attachments cite the relevant currently held authority.

Miscellaneous

a. Removal of Airport Restriction Condition

Pursuant to the September 1988 amended U.S.-Mexico Air Transport Agreement, all-cargo services to Mexico City were to be provided only through Toluca Airport. In this regard, the Department issued U.S. carrier all-cargo certificates limiting Mexico City services to the Toluca Airport facility only. In January 1991, however, each of the U.S. carriers providing all-cargo services to Mexico received notice from the Mexican aviation authorities stating that all-cargo services could now be provided at Mexico City International Airport and Toluca Airport. Subsequently, the Department granted the incumbent carriers exemptions from the airport-related certificate condition to permit the carriers to use Mexico City International Airport as well as Toluca Airport. In these circumstances, the airport restriction is no longer necessary. Therefore, we will not include the certificate condition prohibiting all-cargo services at Mexico City International Airport on new certificates issued by this order, and we will delete that certificate condition from the reissued certificates issued by this order.

b. Intermittent Services and Dormancy Issues

⁴ 14 CFR Part 399.120.

Federal Express (in Docket 49525) and UPS (in Docket 49804) each requests certain U.S.-Mexico certificate authority to be used on a discretionary/intermittent basis. Specifically, Federal Express requests that its certificate be amended to add Memphis-Mexico City/Guadalajara/Monterrey authority as additional discretionary authority to allow the carrier operating flexibility in its choice of U.S. gateways for service to Mexico. UPS requests that its certificate be amended to add Louisville-Mexico City/Monterrey/Guadalajara authority for intermittent services, as may be required by unusual traffic flows, weather, or mechanical difficulties. UPS requests that, because of the intermittent nature of the service, it be granted a waiver of the dormancy notice conditions normally imposed on U.S.-Mexico authority.⁵ UPS maintains that grant of such a waiver would be in the public interest because it would provide the needed flexibility to permit the carrier to make temporary routing changes in emergencies, and that such flexibility would not undercut the Department's goal of keeping unused authority available for carriers that wish to use it.⁶

DHL filed an answer to Federal Express' application, stating that it had no objection to the carrier's application as long as DHL's request is also granted for authority to serve Mexico points from Cincinnati (Docket OST-95-470). DHL and Federal Express filed responsive pleadings to UPS' application. DHL supports UPS' application for authorization of intermittent services and agrees that the dormancy condition should not be imposed. Federal Express supports UPS' request provided that its own application for similar intermittent authority is granted.

We have decided to grant the requests of Federal Express and UPS for the requested intermittent authority. In the past, it has been our general policy to grant only the authority that carriers stated that they would use on a regular basis.⁷ The purpose of this policy was to ensure that the limited route rights would be used fully, and if they were not, that they would be readily available to other carriers that would use them. We have reviewed our policy in this matter as a result of the carrier applications before us and are persuaded by the carriers' representations that the additional flexibility to provide intermittent services would enhance their ability to provide more responsive service to the shipping public by enabling them to adjust their operations to fluctuations in demand for service, as well as to weather and mechanical problems, and would not undermine the overall goals that the dormancy policy is designed to achieve. In both of the subject applications, the carriers request

⁵ Pursuant to the Department's procedural orders with respect to U.S.-Mexico licensing matters (Orders 88-7-43 and 88-10-30), U.S. carriers certificated under the amended September 1988 U.S.-Mexico Air Transport Agreement are required to notify the Department if they fail to inaugurate service within 90 days of certification, or when discontinuing service on a U.S.-Mexico route or city pair for 90 days or longer.

⁶ In this regard, UPS states that, unlike passenger carriers, all-cargo carriers normally have a limited number of markets they are likely to want to serve, and it is unlikely that any other U.S. all-cargo carrier serving Mexico would want to use UPS's national air hub in Louisville.

⁷ The Department has granted limited intermittent U.S.-Mexico all-cargo route authority by exemption without imposition of the dormancy provisions. See e.g., Order 95-6-11 regarding UPS Docket 49490.

intermittent Mexico authority from their major U.S. hubs--Federal Express at Memphis and UPS at Louisville. No other carriers have expressed interest in serving Mexico from these U.S. points and no party has opposed the requests. In these circumstances, we find that approval of the carriers' requests is in the public interest.

That said, while we are persuaded to afford the carriers the requested operating flexibility, we put them on notice that, should another carrier apply to serve a city-pair market served intermittently with a proposal to serve on a regular basis, we would have to reconsider whether, in the circumstances presented, award of the intermittent authority continues to be in the public interest.

We have also decided not to impose our standard dormancy condition on authority that is identified as intermittent. In this regard, however, we will require that each U.S. carrier providing Mexico all-cargo services identify each U.S.-Mexico city-pair market that will be served on an intermittent basis. A listing of these markets will be published subsequent to the Department's receipt of the requested information. This will enable the Department to monitor how the various U.S.-Mexico markets are being served and ensure that all interested parties are notified of the status of the markets at issue. If the status of a given city-pair market changes, the carrier is responsible for updating that information with the Department. We will publish the updated city-pair information in the Department's Weekly List of Applications Filed. This information should be provided in the form of a letter addressed to the Director, Office of International Aviation, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. The carriers' initial responses with respect to the identification of intermittent markets must be filed within 10 days of the service date of this order.

c. Request for Permanent Authority

DHL requests, in Docket OST-95-470, that it be granted permanent certificate authority to serve the Cincinnati/Houston-Mexico City/Monterrey/Guadalajara markets.⁸

We have decided to dismiss DHL's request for permanent authority. The U.S.-Mexico aviation agreement, while more open than in the past, continues to contain restrictions on entry. Specifically, the United States is limited to designation of five carriers for all-cargo services. Furthermore, of these, only one carrier may be designated to provide all-cargo services in a given city-pair market. While these market restrictions can be lifted on an ad hoc basis in a given case, the fact remains that approval for additional carrier services is neither automatic nor guaranteed. In these circumstances, we must continue to regard the U.S.-Mexico routes as limited entry. It is the Department's policy to award temporary certificates to U.S. air carriers on limited-entry international routes.⁹ DHL has not presented any information to persuade us to change our policy here.

d. Federal Express' Petition for Reconsideration

⁸ On May 18, 1994, DHL filed a motion for expedited treatment of its application in Docket OST-95-470. In light of our action here, we will dismiss the motion as moot.

⁹ See 14 CFR Part 399.120. See also 51 FR 43180, No. 239, December 1, 1986.

Federal Express, in an exemption proceeding in Docket 47115, petitioned the Department for reconsideration of Order 93-8-31 regarding certain U.S.-Mexico licensing procedures in order to provide for certain intermittent all-cargo services, and requested that dormancy conditions not be imposed on those operations. Because we have changed our policy here, as discussed above, and are granting Federal Express' certificate application (in Docket 49525), for

authority which includes the intermittent authority at issue in Docket 47115, and because we are granting the intermittent authority without imposition of the usual U.S.-Mexico dormancy provisions, we will dismiss Federal Express' petition for reconsideration, in Docket 47115, as moot.

e. Requests for Non-Mexico Markets

UPS requests, in Docket 49533, certificate authority to serve Guatemala on operations beyond Mexico City on a Houston-Mexico City-Guatemala City routing. UPS has also filed as separate certificate application for Guatemala all-cargo authority in Docket 48693. We have decided to defer action on UPS' request for certificate authority to serve Guatemala in Docket 49533. Given the dormancy provisions and certain related reporting requirements related to U.S.-Mexico certificate authority, we will address UPS' requests for Guatemala certificate authority by separate order.

Findings and Conclusions

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is consistent with the public convenience and necessity to amend or issue each applicant a certificate in the form attached;
2. Each applicant is a citizen of the United States and is fit, willing, and able to perform properly the foreign air transportation described in the attached certificate and to conform to the provisions of Subtitle VII of Title 49, United States Code (Transportation), and to the Department's rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the attached certificates and certificate amendments be subject to the terms, conditions, and limitations contained in and attached to those certificates and to such others required by the public interest as the Department may prescribe;
4. Except as otherwise noted in the attachments, the issuance of each of these certificates and certificate amendments does not constitute a "major regulatory action" under the Energy, Policy and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations;¹⁰ and

¹⁰ Our finding is based on the fact that grant of each application would not result in a near-term increase in annual fuel consumption in excess of 10 million gallons.

5. The public interest does not require an oral evidentiary hearing or a show-cause proceeding on any of these applications. There are no material, determinative issues of fact requiring such procedures for their resolution.

ACCORDINGLY,

1. We amend, issue, or reissue in the form attached, certificates of public convenience and necessity to the applicants listed in the caption of this order;
2. The certificates and certificate amendments will be effective 30 days after the service date of this order, subject to the extension of those effective dates in accordance with the provision of the certificate and certificate amendments;
3. We defer action on the application of United Parcel Service Co., in Docket 49533, to the extent that the carrier requests certificate authority to serve Guatemala on a Houston-Mexico City-Guatemala routing;
4. We dismiss the application of Amerijet International, Inc., in Docket 45959, to the extent the carrier requests certificate authority in the Houston-Cancun/Merida and Dayton-Mexico City markets;
5. We dismiss, without prejudice, the application of Amerijet International, Inc., in Docket 47801, to the extent the carrier requests certificate authority in the Miami-Chetumal/Veracruz/Puebla/Tapachula and Dallas/Ft. Worth-Mexico City/Guadalajara/Monterrey markets;
6. We dismiss, without prejudice, the application of United Parcel Service Co., in Docket 49533, to the extent the carrier requests certificate authority in the Houston-Guadalajara/Monterrey, San Antonio-Guadalajara, and Louisville-Mexico City markets;
7. We dismiss, without prejudice, the application of DHL Airways, Inc., in Docket OST-95-470, to the extent the carrier requests permanent certificate authority;
8. We dismiss, as moot, the petition for reconsideration filed by Federal Express Corporation in Docket 47115;
9. We dismiss, as moot, the motion of DHL Airways, Inc., filed in Docket OST-95-470, for expedited treatment;

10. We grant the motion of United Parcel Service Co., for leave to file an otherwise unauthorized document in Docket 49084;

11. We grant the motion of Challenge Air Cargo, Inc., for leave to file an otherwise unauthorized document in Dockets 47801 and OST-95-470;

12. We grant the motions of DHL Airways, Inc., for leave to file otherwise unauthorized documents in Docket OST-95-470;

13. To the extent not granted, deferred, or dismissed, we deny all motions and requests in these dockets;

14. As discussed in the context of this order, we require the applicant carriers to identify, within 10 days from the service date of this order, each U.S.-Mexico city-pair market that will be served on an intermittent basis;

15. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order shall become effective upon the 61st day after its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;¹¹ and

16. We will serve this order on the persons listed in the attached service list, which includes the applicants, the Ambassador in Washington, D.C. of Mexico, other parties in these dockets, the U.S. Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

¹¹ This order was submitted for section 41307 review on November 7, 1996. On November 25, 1996, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

SUMMARY OF U.S.-MEXICO CERTIFICATE APPLICATIONS

CARRIER AND DKT. #	CERTIFICATE RENEWAL REQUESTS	NEW/AMENDED AUTHORITY REQUESTS	AUTHORITY GRANTED BY THIS ORDER	DISMISSED/ DEFERRED
Amerijet 45959	Miami-Mexico City/ Merida	Houston-Cancun/Merida, Dayton-Mexico City (via Saltillo), with certain integration authority	Miami-Mexico City/Merida	Dismissed Houston-Cancun/Merida -no firm plans to serve market. Dismissed Dayton-Mexico City (via Saltillo) for dormancy.
Amerijet 47801		Miami-Cancun/ Guadalajara/Chetumal/ Veracruz/Puebla/Tapachula, DFW-Mexico City/Guadalajara/ Monterrey	Miami-Cancun/Guadalajara	Dismissed Miami-Chetumal/Veracruz/ Puebla/Tapachula, DFW-Mexico City/ Guadalajara/Monterrey for dormancy
DHL OST-95-470		Cincinnati/Houston-Mexico City/Monterrey/ Guadalajara (requests permanent authority)	Cincinnati/Houston-Mexico City/Monterrey/ Guadalajara	Dismissed request for permanent authority.
Fed. Ex. 49525	Harlingen-Mexico City/ Guadalajara/Monterrey	Memphis-Mexico City/ Guadalajara/Monterrey (intermittent)	Harlingen/Memphis-Mexico City/Guadalajara/ Monterrey	
UPS OST-95-614		San Antonio-Guadalajara	San Antonio-Guadalajara	
UPS 49084		Louisville-Mexico City/ Monterrey/Guadalajara (intermittent)	Louisville-Mexico City/ Monterrey/Guadalajara w/o imposition of dormancy condition	
UPS 49517		San Antonio-Monterrey with integration authority to serve via Guadalajara	San Antonio-Monterrey with integration authority to serve via Guadalajara	
UPS 49533	Houston-Mexico City/ Guadalajara/Monterrey	San Antonio-Guadalajara Louisville-Mexico City Houston-Mexico City, and beyond to Guatemala City	Houston-Mexico City	Deferred on Guatemala (handle by separate order). Dismissed Houston-Guadalajara/Monterrey for dormancy. Dismissed San Antonio-Guadalajara and Louisville-Mexico City - duplicative of Dockets 48641 and 49084.

Amerijet International, Inc.

Renewal and Amendment of Certificate for **Route 570**

Filed: 4/28/94 **Docket:** 45959 **Notice:** 59FR (24194) 5/10/94
Filed: 10/21/91 **Docket:** 47801 **Notice:** 56FR (56445) 11/4/91

I. Authority Sought: Docket 45959: (1) Renewal of authority to provide scheduled foreign air transportation of property and mail between (a) the terminal point Miami, Florida, and the terminal point Mexico City, Mexico; (b) the terminal point Miami, Florida, and the terminal point Merida, Mexico; and (2) amendment of its certificate to add authority to provide scheduled foreign air transportation of property and mail between (a) the terminal point Houston, Texas, and the terminal point Cancun, Mexico; (b) the terminal point Houston, Texas, and the terminal point Merida, Mexico; and (c) the terminal point Dayton, Ohio, and the terminal point Mexico City/Toluca, Mexico (via Saltillo, Mexico). Amerijet also requests certain integration authority to combine its services in the Houston-Cancun/Merida and Dayton-Mexico City markets with its existing authority to serve Mexico as well as points in the Caribbean and other points in Central America and South America. Amerijet further requests that it be relieved of the certificate condition imposed by Order 89-9-36 which prohibits Amerijet from serving Mexico City through Mexico City International Airport.

Docket 47801: Amendment of its certificate to add authority to provide scheduled foreign air transportation of property and mail between (1) the terminal point Miami, Florida, on the one hand, and the coterminal points Cancun, Guadalajara, Chetumal, Veracruz, Puebla, and Tapachula, Mexico, on the other hand; and (2) the terminal point Dallas/Ft. Worth, Texas, on the one hand, and the coterminal points Mexico City, Guadalajara, and Monterrey, Mexico, on the other hand.

II. Relevant Currently Held Authority: Amerijet currently holds an experimental certificate of public convenience and necessity to provide scheduled all-cargo service on Route 570 authorizing services in various U.S.-Mexico city-pair markets, including the Miami-Mexico City/Merida markets. Order 89-9-36. Under the terms of the certificate, Amerijet's authority expired on October 27, 1994. Amerijet filed a timely application for renewal and its authority has remained in effect pursuant to the provisions of the Administrative Procedures Act, 5 U.S.C. 558(c), pending action on its renewal application.

Amerijet also holds exemption authority to serve the Houston-Cancun/Merida markets. Order 94-8-6. Under the terms of the exemption, Amerijet's authority expired on June 8, 1996. Amerijet filed a timely application for renewal and its authority has remained in effect pursuant to the provisions of the Administrative Procedures Act, 5 U.S.C. 558(c), pending action on its renewal application. However, the authority is currently dormant. (See dormancy notice dated January 11, 1995, and Amerijet's renewal application, filed in Docket OST-96-1243, at 3.) Amerijet's previously-held exemption authority to serve the Dayton-Mexico City market (confirmed by Order 92-10-43), expired September 2, 1994. Amerijet did not seek renewal of this exemption authority.

Amerijet holds exemption authority to serve the Miami-Cancun and Miami-Guadalajara markets. (Notice of Action Taken dated September 13, 1996, and Order 95-8-36, respectively.) Amerijet's exemption authority to serve the Miami-Chetumal/Veracruz/Puebla/Tapachula and Dallas/Ft. Worth-Mexico City/Guadalajara/Monterrey markets expired September 13, 1996. (See Notice of Action Taken dated September 13, 1996.)

III. Pleadings: Docket 45959: The City of Houston and the Greater Houston Partnership filed in support of Amerijet's application. DHL Airways filed an answer stating that it had no objection to Amerijet's application as long as its application for Cincinnati/Houston-Mexico City authority is also granted.

Docket 47801: Challenge Air Cargo, Inc.; the Dallas/Ft. Worth Parties; DHL Airways, Inc.; Federal Express Corporation; and Aerial Transit Company filed responsive pleadings to this application.* The pleadings directly related to Amerijet's application concerned two competing requests for services in certain then single-designation Dallas/Ft. Worth-Mexico markets. Subsequently, however, the Governments of the United States and Mexico agreed to double designation services for the subject markets. Therefore, the issues raised by the respondents in this matter became moot upon intergovernmental agreement on double-designation for those markets.

IV. Public Convenience and Necessity: The authority granted is consistent with the U.S.-Mexico Air Transport Agreement.

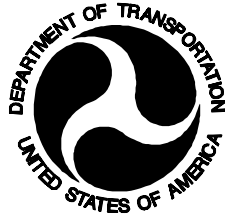
* Challenge accompanied its response with a motion for leave to file an otherwise unauthorized document. We will grant the motion.

V. Fitness/Citizenship: Amerijet has previously been found to be a citizen of the United States and fit, willing and able to provide scheduled foreign air transportation of property and mail as a certificated air carrier under section 41102 of Title 49 U.S.C. See, e.g., Order 92-3-41. The foreign air transportation authorized does not constitute a substantial change in operations under Part 204 of the Department's regulations warranting further review by the Department. Moreover, no information has come to our attention which would lead us to question Amerijet's fitness to conduct the air transportation operations authorized here.

VI. Terms, Conditions and Limitations: Standard Mexico certificate conditions. (See Order 89-9-36.) We will reissue Amerijet's certificate for Route 570 to (1) reflect renewal of Amerijet's authority to serve the Miami-Mexico City/Merida markets for an additional five years; (2) reflect new certificate authority to serve the Miami-Cancun/Guadalajara markets; (3) delete dormant certificate authority to serve the Oakland-Mexico City/Guadalajara markets; (4) delete airport condition; (5) delete expired backup authority to serve the Houston-Mexico City/Guadalajara markets; (6) delete obsolete terms and conditions; and (7) incorporate new standard terms and conditions applicable to U.S. carrier certificates.

As discussed in the text of this order, we will (1) dismiss Amerijet's request for Houston-Cancun/Merida and Dayton-Mexico City (via Saltillo) certificate authority in Docket 45959; and (2) dismiss Amerijet's request for Miami-Chetumal/Veracruz/Puebla/Tapachula and Dallas/Ft. Worth-Mexico City/ Guadalajara/Monterrey certificate authority in Docket 47801.

VII. Duration: Five years. 49 U.S.C. 41102(c).



**Experimental Certificate of Public
Convenience and Necessity
for**

Route 570
(as reissued)
This Certifies That

AMERIJET INTERNATIONAL, INC.

is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 96-11-24
On November 7, 1996
Aviation**

Effective on January 1, 1997

**Charles A. Hunnicutt
Assistant Secretary for**

and International Affairs

Terms, Conditions and Limitations

Amerijet International, Inc., for **Route 570**

is authorized to engage in scheduled foreign air transportation of property and mail over the following U.S.-Mexico route segments:

1. Between the terminal point Miami, Florida, and the terminal point Merida, Mexico.
2. Between the terminal point Miami, Florida, and the terminal point Mexico City, Mexico.
3. Between the terminal point Miami, Florida, and the terminal point Cancun, Mexico.
4. Between the terminal point Miami, Florida, and the terminal point Guadalajara, Mexico.

This authority is subject to the following terms, conditions, and limitations:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).

* This certificate, last issued by Order 89-9-36, is reissued to (1) reflect renewal of Amerijet's authority to serve the Miami-Merida/Mexico City markets (formerly segments 1 and 2); add new authority to serve the Miami-Cancun/Guadalajara markets; (3) delete dormant certificate authority to serve the Oakland-Mexico City/Guadalajara markets (formerly segments 3 and 4); (4) delete airport condition; (5) delete expired backup authority to serve the Houston-Mexico City/Guadalajara markets (formerly segments 5 and 6); (6) delete obsolete terms and conditions; and (7) incorporate new standard terms and conditions applicable to U.S. carrier certificates.

- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (8) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.
- (9)(a) The holder may combine services on all segments of this certificate and combine services on this certificate with U.S.-Mexico all-cargo services authorized by other Department of Transportation certificates or exemptions.
- (b) The provisions in paragraph 8(a), above, shall not authorize services which would constitute multiple designations on city-pair markets where such multiple designations are not agreed to by the United States and Mexico.

(10) The holder may combine services authorized by this certificate with services between the United States and other foreign points authorized by certificate or by exemption on a blind-sector basis; provided that the services are in compliance with the provisions of all applicable bilateral aviation agreements;

(11) The route integration authority granted is subject to the condition that any service under this certificate shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award on the route integration authority requested should be construed as conferring upon the carrier additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the carrier notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedure to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in this certificate by virtue of the route integration authority granted here, but that are not being used by the carrier, the holding of such authority by route integration will not be construed as providing any preference for the carrier in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(12) The holder shall file notice with the Department if it discontinues services on a route segment for 90 days or longer. This notice shall be given as soon as the decision to discontinue service (other than seasonal/intermittent service) is made, but in no case later than the 91st day of dormancy. Notices shall be filed in the form of a letter addressed to the U.S. Department of Transportation, U.S. Air Carrier Licensing Division, X-44, 400 Seventh Street, SW, Washington, DC 20590, and shall identify the dormant route segment, the certificate route number, and the date the 90th day of dormancy will or did occur.

(13) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(14) In the event that the holder commences operations for which it was found "fit, willing, and able," and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

This certificate shall become effective January 1, 1997, provided, however, that prior to the date on which the certificate would otherwise become effective, the Department, either on its own initiative or upon a timely filing of a petition for reconsideration of the order issuing this certificate, may by order or orders extend such effective date from time to time.

The authority to serve segments 1 through 4 in this certificate shall continue in effect until **January 1, 2002**: notwithstanding the above, however, the authority to serve any segment shall expire (a) the 90th day after the holder discontinues service on that segment, or (b) the holder notifies the Department (as provided in this certificate) that the segment is dormant, whichever occurs earlier; unless the Department earlier suspends, modifies, or deletes the authority.

DHL Airways, Inc.

Certificate for **Route 725**

Filed: 10/21/91 **Docket:** OST-95-470
Amended: 2/16/95

Notice: 56FR (56445) 11/4/91
Notice: 61FR (56082) 10/30/96

I. Authority Sought: Scheduled foreign air transportation of property and mail between (1) the terminal point Cincinnati, Ohio, on the one hand, and the coterminal points Mexico City, Monterrey, and Guadalajara, Mexico, on the other hand; and (2) the terminal point Houston, Texas, on the one hand, and the coterminal points Mexico City, Monterrey, and Guadalajara, Mexico, on the other hand.* DHL requests that this authority be granted on a permanent basis.**

II. Relevant Currently Held Authority: DHL holds exemption authority to serve the Cincinnati/Houston-Mexico City markets (see Order 96-6-38), and the Cincinnati/Houston-Guadalajara/Monterrey markets (see Order 96-3-17).

III. Pleadings: Challenge Air Cargo, Inc.; Amerijet International, Inc.; the Dallas/Ft. Worth Parties; Federal Express Corporation; and Aerial Transit Company filed responsive pleadings to the application.*** These pleadings dealt with (1) carrier selection issues with respect to the two then-available air carrier designations for U.S.-Mexico all-cargo services, and (2) competing requests for services in certain single-designation Dallas/Ft. Worth-Mexico markets. Both issues were subsequently resolved and do not need to be addressed here.

IV. Public Convenience and Necessity: The authority granted is consistent with the U.S.-Mexico Air Transport Agreement.

V. Fitness/Citizenship: DHL has previously been found to be a citizen of the United States and fit, willing and able to provide scheduled foreign air transportation of property and mail as a certificated air carrier under section 41102 of Title 49 U.S.C. See, e.g., Order 95-8-34. The foreign air transportation authorized does not constitute a substantial change in

* DHL amended its application to add Monterrey and Guadalajara as coterminal points with Mexico City, and to delete requests for Dallas/Ft. Worth and San Antonio as alternate coterminals.

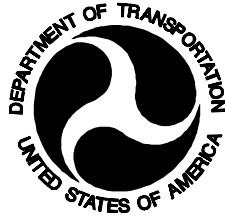
** DHL also filed a motion for expedited treatment of its application. We will dismiss the motion as moot.

*** Challenge and DHL accompanied certain of their pleadings with motions for leave to file otherwise unauthorized documents. We will grant their motions.

operations under Part 204 of the Department's regulations warranting further review by the Department. Moreover, no information has come to our attention which would lead us to question DHL's fitness to conduct the air transportation operations authorized here.

VI. Terms, Conditions and Limitations: Standard Mexico certificate conditions. (See Order 89-9-36.) We will issue to DHL a certificate to reflect authority to serve the Cincinnati/Houston-Mexico City/Monterrey/Guadalajara markets. As discussed in the text of this order, we will dismiss DHL's request for permanent authority.

VII. Duration: Five years. 49 U.S.C. 41102(c).



**Experimental Certificate of Public
Convenience and Necessity
for**

Route 725

This Certifies That

DHL AIRWAYS, INC.

is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 96-11-24
On November 7, 1996
Aviation**

Effective on January 1, 1997

**Charles A. Hunnicutt
Assistant Secretary for**

and International Affairs

Terms, Conditions and Limitations

DHL Airways, Inc., for **Route 725**

is authorized to engage in scheduled foreign air transportation of property and mail over the following U.S.-Mexico route segments:

1. Between the terminal point Cincinnati, Ohio, and the terminal point Mexico City, Mexico.
2. Between the terminal point Cincinnati, Ohio, and the terminal point Monterrey, Mexico.
3. Between the terminal point Cincinnati, Ohio, and the terminal point Guadalajara, Mexico.
4. Between the terminal point Houston, Texas, and the terminal point Mexico City, Mexico.
5. Between the terminal point Houston, Texas, and the terminal point Monterrey, Mexico.
6. Between the terminal point Houston, Texas, and the terminal point Guadalajara, Mexico.

This authority is subject to the following terms, conditions, and limitations:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.

- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (8) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.
- (9)(a) The holder may combine services on all segments of this certificate and combine services on this certificate with U.S.-Mexico all-cargo services authorized by other Department of Transportation certificates or exemptions.
- (b) The provisions in paragraph 8(a), above, shall not authorize services which would constitute multiple designations on city-pair markets where such multiple designations are not agreed to by the United States and Mexico.
- (10) The holder may combine services authorized by this certificate with services between the United States and other foreign points authorized by certificate or by exemption on a blind-sector basis; provided that the services are in compliance with the provisions of all applicable bilateral aviation agreements;

(11) The route integration authority granted is subject to the condition that any service under this certificate shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award on the route integration authority requested should be construed as conferring upon the carrier additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the carrier notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedure to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in this certificate by virtue of the route integration authority granted here, but that are not being used by the carrier, the holding of such authority by route integration will not be construed as providing any preference for the carrier in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(12) The holder shall file notice with the Department if it discontinues services on a route segment for 90 days or longer. This notice shall be given as soon as the decision to discontinue service (other than seasonal/intermittent service) is made, but in no case later than the 91st day of dormancy. Notices shall be filed in the form of a letter addressed to the U.S. Department of Transportation, U.S. Air Carrier Licensing Division, X-44, 400 Seventh Street, SW, Washington, DC 20590, and shall identify the dormant route segment, the certificate route number, and the date the 90th day of dormancy will or did occur.

(13) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(14) In the event that the holder commences operations for which it was found “fit, willing, and able,” and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

This certificate shall become effective January 1, 1997, provided, however, that prior to the date on which the certificate would otherwise become effective, the Department, either on its own initiative or upon a timely filing of a petition for reconsideration of the order issuing this certificate, may by order or orders extend such effective date from time to time.

The authority to serve segments 1 through 6 in this certificate shall continue in effect until January 1, 2002: notwithstanding the above, however, the authority to serve any segment shall expire (a) the 90th day after the holder discontinues service on that segment, or (b) the holder notifies the Department (as provided in this certificate) that the segment is dormant, whichever occurs earlier; unless the Department earlier suspends, modifies, or deletes the authority.

Federal Express Corporation

Renewal and Amendment of Certificate for **Route 568**

Filed: 4/25/94 **Docket:** 49525

Notice: 59FR (24194) 5/10/94

I. Authority Sought: (1) Renewal of authority to provide scheduled foreign air transportation of property and mail between the terminal point Harlingen, Texas, on the one hand, and the coterminal points Mexico City, Guadalajara, and Monterrey, Mexico, on the other hand; (2) amendment of certificate to add authority to provide scheduled foreign air transportation of property and mail between the terminal point Memphis, Tennessee, on the one hand, and the coterminal points Mexico City, Guadalajara, and Monterrey, Mexico, on the other hand. Federal Express requests that the Memphis authority be added to its certificate as additional discretionary authority to allow operating flexibility in its choice of U.S. gateways for service to Mexico.

II. Relevant Currently Held Authority: Federal Express currently holds an experimental certificate of public convenience and necessity to provide scheduled all-cargo service on Route 568 authorizing services in various U.S.-Mexico city-pair markets, including the Harlingen-Mexico City/Guadalajara/Monterrey markets. Order 89-9-36. Under the terms of the certificate, Federal Express' authority to serve the Harlingen-Mexico markets expired on October 27, 1994. Federal Express filed a timely application for renewal and its authority has remained in effect pursuant to the provisions of the Administrative Procedures Act, 5 U.S.C. 558(c), pending action on its renewal application. Federal Express also holds exemption authority to serve the Memphis-Mexico/Guadalajara/Monterrey markets. See Order 93-8-31. Under the terms of the exemption, Federal Express' authority to serve the Memphis-Monterrey market expired July 16, 1994, and the authority to serve the Memphis-Mexico City/Guadalajara markets expired July 16, 1995. Federal Express filed a timely application for renewal and its authority has remained in effect pursuant to the provisions of the Administrative Procedures Act, 5 U.S.C. 558(c), pending action on its renewal application.

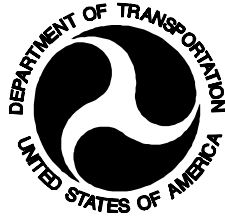
III. Pleadings: DHL Airways filed an answer stating that it had no objection to Federal Express' application as long as its own application for Cincinnati/Houston-Mexico City authority is also granted.

IV. Public Convenience and Necessity: The authority granted is consistent with the U.S.-Mexico Air Transport Agreement.

V. **Fitness/Citizenship:** Federal Express has previously been found to be a citizen of the United States and fit, willing and able to provide scheduled foreign air transportation of property and mail as a certificated air carrier under section 41102 of Title 49 U.S.C. See, e.g., Order 95-6-26. The foreign air transportation authorized does not constitute a substantial change in operations under Part 204 of the Department's regulations warranting further review by the Department. Moreover, no information has come to our attention which would lead us to question Federal Express' fitness to conduct the air transportation operations authorized here.

VI. **Terms, Conditions and Limitations:** Standard Mexico certificate conditions. (See Order 89-9-36.) We will reissue Federal Express' certificate for Route 558 to (1) reflect renewal of Federal Express' authority to serve the Harlingen-Mexico City/Guadalajara/Monterrey markets for an additional five years; (2) reflect new certificate authority to serve the Memphis-Mexico City/Guadalajara/Monterrey markets; (3) delete airport condition; (4) delete obsolete terms and conditions; and (5) incorporate new standard terms and conditions applicable to U.S. carrier certificates. As discussed in the text of this order, to the extent that any of these operations are intermittent in nature, Federal Express will be required to identify those markets within 10 days of the service date of this order.

VII. **Duration:** Five years. 49 U.S.C. 41102(c).



**Experimental Certificate of Public
Convenience and Necessity
for**

Route 568

(as reissued)

This Certifies That

FEDERAL EXPRESS CORPORATION

is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

Issued by Order 96-11-24

On November 7, 1996

Aviation

Effective on January 1, 1997

Charles A. Hunnicutt

Assistant Secretary for

and International Affairs

Terms, Conditions and Limitations

Federal Express Corporation for **Route 568**

is authorized to engage in scheduled foreign air transportation of property and mail over the following U.S.-Mexico route segments:

1. Between the terminal point Harlingen, Texas, and the terminal point Mexico City, Mexico.
2. Between the terminal point Harlingen, Texas, and the terminal point Guadalajara, Mexico.
3. Between the terminal point Harlingen, Texas, and the terminal point Monterrey, Mexico.
4. Between the terminal point Memphis, Tennessee, and the terminal point Mexico City, Mexico.
5. Between the terminal point Memphis, Tennessee, and the terminal point Guadalajara, Mexico.
6. Between the terminal point Memphis, Tennessee, and the terminal point Monterrey, Mexico.

This authority is subject to the following terms, conditions, and limitations:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

* This certificate, last issued by Order 89-9-36, is reissued to (1) reflect renewal of Federal Express' authority to serve the Harlingen-Mexico City/Guadalajara/Monterrey markets (segments 1 through 3); (2) add new authority to serve the Memphis-Mexico City/Guadalajara/Monterrey markets; (3) delete airport condition; (4) delete obsolete terms and conditions; and (5) incorporate new standard terms and conditions applicable to U.S. carrier certificates.

- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (8) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.
- (9)(a) The holder may combine services on all segments of this certificate and combine services on this certificate with U.S.-Mexico all-cargo services authorized by other Department of Transportation certificates or exemptions.
- (b) The provisions in paragraph 8(a), above, shall not authorize services which would constitute multiple designations on city-pair markets where such multiple designations are not agreed to by the United States and Mexico.

(10) The holder may combine services authorized by this certificate with services between the United States and other foreign points authorized by certificate or by exemption on a blind-sector basis; provided that the services are in compliance with the provisions of all applicable bilateral aviation agreements;

(11) The route integration authority granted is subject to the condition that any service under this certificate shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award on the route integration authority requested should be construed as conferring upon the carrier additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the carrier notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedure to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in this certificate by virtue of the route integration authority granted here, but that are not being used by the carrier, the holding of such authority by route integration will not be construed as providing any preference for the carrier in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(12) The holder shall file notice with the Department if it discontinues services on a route segment for 90 days or longer. This notice shall be given as soon as the decision to discontinue service (other than seasonal/intermittent service) is made, but in no case later than the 91st day of dormancy. Notices shall be filed in the form of a letter addressed to the U.S. Department of Transportation, U.S. Air Carrier Licensing Division, X-44, 400 Seventh Street, SW, Washington, DC 20590, and shall identify the dormant route segment, the certificate route number, and the date the 90th day of dormancy will or did occur.

(13) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(14) In the event that the holder commences operations for which it was found "fit, willing, and able," and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

This certificate shall become effective January 1, 1997, provided, however, that prior to the date on which the certificate would otherwise become effective, the Department, either on its own initiative or upon a timely filing of a petition for reconsideration of the order issuing this certificate, may by order or orders extend such effective date from time to time.

The authority to serve segments 1 through 6 in this certificate shall continue in effect until January 1, 2002: notwithstanding the above, however, the authority to serve any segment shall expire (a) the 90th day after the holder discontinues service on that segment, or (b) the holder notifies the Department (as provided in this certificate) that the segment is dormant, whichever occurs earlier; unless the Department earlier suspends, modifies, or deletes the authority.

United Parcel Service Co.

Renewal and Amendment of Certificate for **Route 569**

Filed: 2/4/93	Docket: OST-95-614	Notice: 58FR (8647) 2/16/93
Amended: 2/10/93		Notice: 58FR (11083) 2/23/93
Filed: 8/11/93	Docket: 49084	Notice: 58FR (45146) 8/26/93
Filed: 4/19/94	Docket: 49517	Notice: 59FR (22883) 5/3/94
Filed: 4/29/94	Docket: 49533	Notice: 59FR (24194) 5/10/94

I. Authority Sought: Docket OST-95-614: New certificate authority to provide scheduled foreign air transportation of property and mail between the terminal point San Antonio, Texas, and the terminal point Guadalajara, Mexico.*

Docket 49084: New certificate authority to provide scheduled foreign air transportation of property and mail between the terminal point Louisville, Kentucky, on the one hand, and the coterminal points Mexico City, Monterrey, and Guadalajara, Mexico, on the other hand. UPS states that it intends to provide services in these markets on an intermittent basis as may be required by unusual traffic flows, weather, and mechanical difficulties. UPS requests that the dormancy condition normally imposed by the Department on U.S.-Mexico all-cargo operations not be imposed for these intermittent services.

Docket 49517: New certificate authority to provide scheduled foreign air transportation of property and mail between the terminal point San Antonio, Texas, and the terminal point Monterrey, Mexico. UPS also requests route integration authority to provide services in the San Antonio-Monterrey market via Guadalajara.

Docket 49533: (1) Renewal of authority to provide scheduled foreign air transportation of property and mail between the terminal point Houston, Texas, on the one hand, and the coterminal points Mexico City, Guadalajara, and Monterrey, Mexico, on the other hand; and (2) amendment of its certificate to add authority to provide scheduled foreign air transportation of property and mail between (a) the terminal point San Antonio, Texas, and the terminal point Guadalajara, Mexico; (b) the terminal point Louisville, Kentucky, and the terminal point Mexico City, Mexico; and (c) the terminal point Houston, Texas, and the terminal point Mexico City, Mexico, and beyond to Guatemala City.

* UPS amended its application to provide schedule information for services in the San Antonio-Guadalajara market.

II. Relevant Currently Held Authority: UPS currently holds an experimental certificate of public convenience and necessity to provide scheduled all-cargo service on Route 568 authorizing services in various U.S.-Mexico city-pair markets, including the Houston-Mexico City/Guadalajara/Monterrey markets. Order 89-9-36. Under the terms of the certificate, UPS' authority expired on October 27, 1994. UPS filed a timely application for renewal of the Houston-Mexico authority. The authority to serve the Houston-Mexico City market has remained in effect pursuant to the provisions of the Administrative Procedures Act, 5 U.S.C. 558(c), pending action on its renewal application. In March 1995, however, UPS' authority to serve the Houston-Guadalajara/Monterrey markets expired automatically due to dormancy.

UPS also holds exemption authority to serve the San Antonio-Guadalajara market (see Order 95-4-25), and the Louisville-Mexico City and San Antonio-Monterrey markets (see Order 95-6-11).

III. Pleadings: Docket OST-95-614: No answers filed.

Docket 49084: DHL Airways, Inc.; Federal Express Corporation; and UPS filed responsive pleadings. ** DHL supports UPS' request to add Louisville-Mexico services on an intermittent basis and agrees that the dormancy condition should not be imposed. Federal Express supports UPS' request provided that Federal Express' application is granted for similar intermittent authority in certain Memphis-Mexico markets.

Docket 49517: The Independent Pilots Association filed in support.

Docket 49533: The Independent Pilots Association filed in support. DHL Airways filed an answer, stating that it had no objection to UPS' application as long as its application for Cincinnati/Houston-Mexico City authority is granted.

IV. Public Convenience and Necessity: The authority granted is consistent with the U.S.-Mexico Air Transport Agreement.

V. Fitness/Citizenship: UPS has previously been found to be a citizen of the United States and fit, willing and able to provide scheduled foreign air transportation of property and mail as a certificated air carrier under section 41102 of Title 49 U.S.C. See, e.g., Order 96-8-37. The foreign air transportation authorized does not constitute a substantial change in operations under Part 204 of the Department's regulations warranting further review by the Department. Moreover, no information has come to our attention which would lead us to question UPS' fitness to conduct the air transportation operations authorized here.

** UPS accompanied its reply with a motion for leave to file an otherwise unauthorized document. We will grant the motion.

VI. Terms, Conditions and Limitations: Standard Mexico certificate conditions. (See Order 89-9-36.) We will reissue UPS' certificate for Route 569 to (1) reflect renewal of UPS' authority to serve the Houston-Mexico City market for an additional five years; (2) reflect new certificate authority to serve the San Antonio-Guadalajara/Monterrey markets and the Louisville-Mexico City/Guadalajara/Monterrey markets; (3) delete dormant certificate authority to serve the Houston-Guadalajara/Monterrey markets; (4) delete airport condition; (5) delete obsolete terms and conditions; and (6) incorporate new standard terms and conditions applicable to U.S. carrier certificates. As discussed in the text of this order, to the extent that any of these operations are intermittent in nature, UPS will be required to identify those markets within 10 days of the service date of this order.

As discussed in the text of this order, we will (1) defer action on UPS' request for new certificate authority to serve Guatemala City in Docket 49533; (2) dismiss UPS' request for renewal of its certificate authority to serve the Houston-Guadalajara/Monterrey markets in Docket 49533; and (3) dismiss UPS' request for certificate authority to serve the San Antonio-Guadalajara and Louisville-Mexico City markets in Docket 49533, because they are duplicative of requests in Dockets 48641 and 49084, respectively.

VII. Duration: Five years. 49 U.S.C. 41102(c).



**Experimental Certificate of Public
Convenience and Necessity
for**

Route 569
(as reissued)
This Certifies That

UNITED PARCEL SERVICE COMPANY

is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 96-11-24
On November 7, 1996
Aviation**

Effective on January 1, 1997

**Charles A. Hunnicutt
Assistant Secretary for**

and International Affairs

Terms, Conditions and Limitations

United Parcel Service Company for **Route 569**

is authorized to engage in scheduled foreign air transportation of property and mail over the following U.S.-Mexico route segments:

1. Between the terminal point Houston, Texas, and the terminal point Mexico City, Mexico.
2. Between the terminal point San Antonio, Texas, and the terminal point Guadalajara, Mexico.
3. Between the terminal point San Antonio, Texas, and the terminal point Monterrey, Mexico.
4. Between the terminal point Louisville, Kentucky, and the terminal point Mexico City, Mexico.
5. Between the terminal point Louisville, Kentucky, and the terminal point Guadalajara, Mexico.
6. Between the terminal point Louisville, Kentucky, and the terminal point Monterrey, Mexico.

* This certificate, last issued by Order 89-9-36, is reissued to (1) reflect renewal of UPS' authority to serve the Houston-Mexico City market (segment 1); add new authority to serve the San Antonio-Guadalajara/Monterrey and Louisville-Mexico City/Guadalajara/Monterrey markets; (3) delete dormant certificate authority to serve the Houston-Guadalajara/Monterrey markets (formerly segments 2 and 3); (4) delete airport condition; (5) delete obsolete terms and conditions; and (6) incorporate new standard terms and conditions applicable to U.S. carrier certificates.

This authority is subject to the following terms, conditions, and limitations:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (8) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.

- (9)(a) The holder may combine services on all segments of this certificate and combine services on this certificate with U.S.-Mexico all-cargo services authorized by other Department of Transportation certificates or exemptions.
- (b) The provisions in paragraph 8(a), above, shall not authorize services which would constitute multiple designations on city-pair markets where such multiple designations are not agreed to by the United States and Mexico.
- (10) The holder may combine services authorized by this certificate with services between the United States and other foreign points authorized by certificate or by exemption on a blind-sector basis; provided that the services are in compliance with the provisions of all applicable bilateral aviation agreements;
- (11) The route integration authority granted is subject to the condition that any service under this certificate shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award on the route integration authority requested should be construed as conferring upon the carrier additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the carrier notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedure to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in this certificate by virtue of the route integration authority granted here, but that are not being used by the carrier, the holding of such authority by route integration will not be construed as providing any preference for the carrier in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.
- (12) The holder shall file notice with the Department if it discontinues services on a route segment for 90 days or longer. This notice shall be given as soon as the decision to discontinue service (other than seasonal/intermittent service) is made, but in no case later than the 91st day of dormancy. Notices shall be filed in the form of a letter addressed to the U.S. Department of Transportation, U.S. Air Carrier Licensing

Division, X-44, 400 Seventh Street, SW, Washington, DC 20590, and shall identify the dormant route segment, the certificate route number, and the date the 90th day of dormancy will or did occur.

(13) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(14) In the event that the holder commences operations for which it was found “fit, willing, and able,” and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

This certificate shall become effective January 1, 1997, provided, however, that prior to the date on which the certificate would otherwise become effective, the Department, either on its own initiative or upon a timely filing of a petition for reconsideration of the order issuing this certificate, may by order or orders extend such effective date from time to time.

The authority to serve segments 1 through 6 in this certificate shall continue in effect until January 1, 2002: notwithstanding the above, however, the authority to serve any segment shall expire (a) the 90th day after the holder discontinues service on that segment, or (b) the holder notifies the Department (as provided in this certificate) that the segment is dormant, whichever occurs earlier; unless the Department earlier suspends, modifies, or deletes the authority.